

2005 DRAFTING REQUEST

Bill

Received: 02/23/2005

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Ted Kanavas (608) 266-9174

By/Representing: Mike Richards

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kanavas@legis.state.wi.us

Carbon copy (CC:) to: cathlene.hanaman@legis.state.wi.us
michael.dsida@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Private interest in public contract

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	rryan 04/28/2005	jdyer 05/05/2005	rschluet 05/05/2005	_____	lemery 05/05/2005		
/2	rryan 07/20/2005	chanaman 08/11/2005	rschluet 08/11/2005	_____	lnorthro 08/11/2005	sbasford 09/06/2005	

FE Sent For: *none*

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May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us**
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/?	rryan	1 5/5 jld					
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FE Sent For:

<END>



TED KANAVAS
STATE SENATOR

- ☐ PER YOUR REQUEST
☐ FOR YOUR INFORMATION
☒ DRAFTING REQUEST

MADELON,

COULD WE GET THIS
DRAFTED?

THANKS,

Mick Richards

STATE CAPITOL

P.O. Box 7993 - Madison, Wisconsin 53707-7993

Supporting Start-Up Technology – Targeted revision of WI State Statutes 946.13

Summary:

Several times each year faculty and staff efforts to get their technology discoveries out of the University and into the marketplace are delayed because of the lengthy process of getting a legal opinion that the person who created the technology to establish the start-up company will not be in violation of Wisconsin State Statutes 946.13 if the company needs to utilize University research facilities or wishes to contract some areas of research to the University. (Because of the thorough campus review process, every request forwarded to the Attorney General has resulted in a finding that the fact situation does not violate s. 946.13.) This unnecessary delay has resulted in lost opportunities for faculty start-up companies to secure certain grants and venture capital. To encourage start-ups, an important component of Wisconsin's economic development efforts, s. 946.13 should be amended to exempt this type of activity.

Request:

The University of Wisconsin is seeking a targeted exemption to s. 946.13. Suggested language follows: "(946.13) does not apply to an individual university faculty member or staff researcher who develops, creates or affiliates with a private company organized in whole or part on the basis of research conducted by employees of the university, when the company then contracts with the university and that contract is reviewed and managed by the university's campus conflict review and management system or another university's campus conflict review and management system."

Background:

- Spin-off technology created at the university has a beneficial effect on the Wisconsin economy. Of 147 UW-Madison related companies in Wisconsin reporting revenues in a 2000 survey, their aggregate gross revenues were just over \$1 billion and they employed approximately 6700 people, mostly high-skilled and high-paid.
- For certain types of technology the best method of bringing it to commercial reality is to encourage the faculty member who created it to establish a company (a "start-up"). On average, 13 new companies per year with ties to UW-Madison have been created in Wisconsin.
- The university has developed a series of rigorous processes to assure that the inherent conflicts between the faculty role in the start-up company and his or her university obligations are managed.
- In some cases, the faculty start-up, in order to succeed, may need to utilize specialized research facilities at the university or may wish to contract some areas of research to the university. The university has created methods for assuring that this is carefully managed and that the costs are the full responsibility of the start-up company.
- Under s. 946.13 of the Wisconsin Statutes, the "self-dealing" statute, (i) any person who in their private capacity negotiates or enters into a contract in which the person as a public employee is responsible for an official duty in regards to making the contract or to perform some official duty requiring the exercise of discretion; or (ii) in his or her public capacity participate in the making of a contract in which the person has a private pecuniary interest, if the person performs in regard to the contract some discretionary act may be found guilty of a Class I felony.
- In order to assure that the individual is not violating s. 946.13, the University requests an opinion from the Attorney General's Office for each instance when the faculty start-up wishes to use University facilities or enter into a sponsored research agreement with the University. *Each such request has resulted in a finding that the fact situation submitted does not violate s. 946.13.* However, the process for gaining this assurance is time consuming and sometimes the delay has resulted in the inability of the faculty start-up to efficiently function under various federal grants to small businesses.
- If Wisconsin wishes to continue to encourage the economic development that has occurred because of this type of activity, it is important to revise the statute to exempt this type of activity from s. 946.13.

For more information:

- Please contact Kristi Thorson or Don Nelson, UW-Madison State Relations, at 262-8967.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2240/2

RLR:.....

In 4/28/05
SOON

JLD

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

ben cat.

- 1 AN ACT...; relating to: the prohibition against a public officer or employee having
- 2 a private interest in a public contract. ✓

Analysis by the Legislative Reference Bureau

Current law prohibits a public officer or employee from making or performing a contract in his or her official capacity if he or she has a private pecuniary interest in the contract and if his or her official involvement in the contract requires the exercise of discretion. For this offense, a person may be fined not more than \$10,000, sentenced to a term of confinement and extended supervision that together may not exceed three and one-half years, or both fined and sentenced.

This bill provides that the prohibition against a public officer having a private interest in a public contract does not apply to a contract for a research company to purchase goods or services from the University of Wisconsin System if the contract is approved by the System office responsible for reviewing conflicts of interest. A "research company" is defined as a private entity engaged in commercial activity that is related to research conducted by an employee or officer of the University of Wisconsin System or to a product of such research.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 SECTION 1. 946.13 (12) of the statutes is created to read:

946.13 (12) (a) In this subsection, “research company” means a private entity engaged in commercial activity that is related to research conducted by an employee or officer of the University of Wisconsin System or to a product of such research.

(b) Subsection (1) does not apply to a contract for a research company to purchase goods or services from the University of Wisconsin System if the contract has been approved by a person to whom the board of regents of the University of Wisconsin System assigns responsibility to investigate potential conflicts of interest.

(END)

d-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2240/dn

RLR:.....
JL

Michael Richards:

Do you want to include a provision specifying whether the bill applies to existing contracts or just to contracts made after the effective date of the bill? Since the bill does not specifically limit its applicability to contracts made after the effective date, it can be construed as applying to all contracts. However, if you want to assure that the bill applies to all contracts, it would be helpful to specify this in the bill.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2240/1dn
RLR:jld:rs

May 5, 2005

Michael Richards:

Do you want to include a provision specifying whether the bill applies to existing contracts or just to contracts made after the effective date of the bill? Since the bill does not specifically limit its applicability to contracts made after the effective date, it can be construed as applying to all contracts. However, if you want to assure that the bill applies to all contracts, it would be helpful to specify this in the bill.

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Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

Ryan, Robin

From: Irwin, Kathy [KIRWIN@vc.wisc.edu]
Sent: Thursday, July 14, 2005 1:20 PM
To: Ryan, Robin
Cc: NELSON, Donald W; NAGY, Casey A
Subject: RE: Bill draft



946.13 legislation
ksi revisio...

Hi Robin, attached is a mark-up of the legislation--the formatting is weird because I had to copy from your pdf to Word to allow me to make changes.

You also asked in a drafter's note whether or not change should apply to all existing contracts or only those after the effective date. We'd like it to apply to all such contracts including those that have already been entered into. That seems reasonable to me as this legislation is to remove any doubt that that's the law currently. Also, I'm assuming that goods and services would apply to situations where we lease specialized research facilities or equipment to a "research company." If you don't think that's the case, then we probably need to add something about that.

Thanks for your help on this. Call if questions

Kathleen S. Irwin
Senior University Legal Counsel
University of Wisconsin-Madison
361 Bascom Hall
500 Lincoln Drive
Madison, Wisconsin 53706

Phone 608.263.7400
FAX 608.263.4725
E-mail kirwin@VC.wisc.edu

-----Original Message-----

From: Ryan, Robin [mailto:Robin.Ryan@legis.state.wi.us]
Sent: Thursday, July 14, 2005 12:45 PM
To: Irwin, Kathy
Subject: Bill draft

<<05-2240/1>>

Kathy,

Here is the bill draft. Sorry to ask you to do a mark-up. I'm fairly sure Don sent me redraft instructions, but I cannot locate them right now.

The LRB fax number is 264-6948.

Thanks,

Robin Ryan
261-6927.

7/14/05

LRB-2240/1

RLR:jld:rs

2005 - 2006 LEGISLATURE

2005 BILL

AN ACT to create 946.13 (12) of the statutes; **relating to:** the prohibition against a public officer or employee having a private interest in a public contract.

Analysis by the Legislative Reference Bureau

Current law prohibits a public officer or employee from making or performing a contract in his or her official capacity if he or she has a private pecuniary interest in the contract and if his or her official involvement in the contract requires the exercise of discretion. For this offense, a person may be fined not more than \$10,000, sentenced to a term of confinement and extended supervision that together may not exceed three and one-half years, or both fined and sentenced.

This bill ~~provides~~ clarifies that the prohibition against a public officer or employee having a private

interest in a public contract does not apply to a contract for a research company to purchase goods or services from the University of Wisconsin System (UW) if the contract is approved by ~~the an individual at the UW System office or campus who is~~ responsible for evaluating and managing ~~reviewing~~ conflicts of interest. A "research company" is defined as a ~~private an~~ entity engaged in commercial activity that is related to research conducted by an employee or officer of the UW System or to a product of such research.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 946.13 (12) of the statutes is created to read:

1

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- 2 - 2005 - 2006 Legislature LRB-2240/1

RLR:jld:rs

SECTION 1 BILL

946.13 (12) (a) In this subsection, "research company" means a ~~private an~~ entity engaged in commercial activity that is related to research conducted by an employee or officer of the University of Wisconsin System or to a product of such research.

(b) Subsection (1) does not apply to a contract ~~for~~ between a research company and the University of Wisconsin System ~~to for the~~ purchase goods or services from the University of Wisconsin System if the contract has been approved by a person ~~to whom the Board of Regents of~~ at the University of Wisconsin System assigns ~~System or campus who has the~~ responsibility ~~to investigate~~ for evaluating and managing potential conflicts of interest.

(END)

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Ryan, Robin

From: Irwin, Kathy [KIRWIN@vc.wisc.edu]
Sent: Friday, July 15, 2005 2:36 PM
To: Ryan, Robin
Subject: RE: follow-up question on LRB-2240

Hi Robin, I've been in meetings all day and am just going into another that will last until at least 5. Then I'm out of the office until next Tuesday. So, how about I call you on Tuesday and can attempt to explain my concerns that prompted the changes.

Regards,
Kathy

Kathleen S. Irwin
Senior University Legal Counsel
University of Wisconsin-Madison
361 Bascom Hall
500 Lincoln Drive
Madison, Wisconsin 53706

Phone 608.263.7400
FAX 608.263.4725
E-mail kirwin@VC.wisc.edu

-----Original Message-----

From: Ryan, Robin [mailto:Robin.Ryan@legis.state.wi.us]
Sent: Thursday, July 14, 2005 2:06 PM
To: Irwin, Kathy
Subject: follow-up question on LRB-2240

Kathy,

Why the language:

"... approved by a person at the University of Wisconsin System or campus who has the responsibility to ...?"

Specifically, why specify campus in addition to the UW System (especially since the definition of campus in ch. 36 refers to buildings and grounds? Also, what do you mean by a person "at" the UW -- must the person who provides approval be a UW System employee or under contract with System?

Thanks,
Robin

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Kathy Irwin:

7/20/05

At Madison campus, Board of Regents
doesn't authorize activities.
Person has responsibility to review contract
for other reasons - partly related to use
of federal grant money.

Person is designated at campus level.
(at least for Madison)
- perhaps System designates reviewed for
other campuses.

~~OK to~~ Will reviewer necessarily be UW
employee? - yes
Kathy says can call the person a
System employee or officer.

Contracts could cover use of
facilities - bill as drafted should
cover this - is a service

Ryan, Robin

From: Irwin, Kathy [KIRWIN@vc.wisc.edu]
Sent: Wednesday, July 20, 2005 10:06 AM
To: Ryan, Robin
Cc: NELSON, Donald W; NAGY, Casey A
Subject: RE: follow-up question on LRB-2240



946.13 legislation
ksi revisio...

Hi Robin, I redrafted my mark-up to reflect our conversation (I hope) and it's attached. Thanks for you help.

ksi

Kathleen S. Irwin
Senior University Legal Counsel
University of Wisconsin-Madison
361 Bascom Hall
500 Lincoln Drive
Madison, Wisconsin 53706

Phone 608.263.7400
FAX 608.263.4725
E-mail kirwin@VC.wisc.edu

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LRB-2240/1

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2005 - 2006 LEGISLATURE

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SECTION 1. 946.13 (12) of the statutes is created to read:

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- 2 - 2005 - 2006 Legislature LRB-2240/1

RLR:jld:rs

SECTION 1 BILL

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purchase of goods or services ~~from the University of Wisconsin System~~ if the contract has been approved by a ~~person to whom the Board of Regents~~ an officer or employee of the University of

Wisconsin System ~~assigns~~ who has the responsibility ~~to investigate~~ for evaluating and managing potential conflicts of interest.

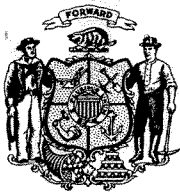
(END)

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State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2240/1

RLR:jld:rs

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for purchase of goods or services

BILL

SECTION 1

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2 engaged in commercial activity that is related to research conducted by an employee
3 or officer of the University of Wisconsin System or to a product of such research.

4 (b) Subsection (1) does not apply to a contract ^{between} for a research company ^{to} and
5 ^{for} purchase goods or services ^{of} from the University of Wisconsin System if the contract ^{is}
6 has been approved by a person to whom the Board of Regents of the University of
7 Wisconsin System assigns responsibility to investigate potential conflicts of interest.

8 (END)

System employee or officer responsible for evaluating and
managing
University of Wisconsin

(c) This subsection applies regardless of the ^{date}
date on which a contract was entered into.

Basford, Sarah

From: Richards, Mike
Sent: Tuesday, September 06, 2005 9:17 AM
To: LRB.Legal
Subject: Jacket Two Bills

Can we get 2240 and 2744 jacketed for the Senate please

Michael D. Richards

Michael D. Richards
Office of State Senator Ted Kanavas
State Capitol, Room 10 South
Madison, WI 53707-7882
608-266-9174